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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1183 OF 1997

Mrs. Aparna Arvind Ambekar ... Petitioner

V/s

1. The Secretary,
   B.P.T. Hammallage Co-operative
   Canteen Society Ltd.

2. K.W.Thakare, Presiding Officer,
   9th Labour Court, Mumbai.

3. Mumbai Port Trust ... Respondents

Mr. Kiran S. Bapat for the petitioner.

Mr. P.M.Palshikar for the Respondent No.1.

Mr. P.Ramaswami i/by Mulla & Mulla and CBC for the respondent No.3.

CORAM: SMT. NISHITA MHATRE, J.

DATED: 26TH SEPTEMBER, 2007.

ORAL JUDGMENT:

1. The petition challenges the order of the Labour Court in Reference (IDA) No. 983 of 1989. The Labour Court has awarded compensation of Rs.20,520/- to the petitioner in lieu of reinstatement in service. The Labour Court has held that the termination of services of the workman from 22.7.1988 is illegal and

unjustified.

2. The petitioner joined service with the 1st respondent as a "Bhakarwali" (Chapati Maker). She worked there till her services were terminated on 22.7.1988. The petitioner called upon the 1st respondent to reinstate her in service with continuity and full back wages by a demand served on the respondent No.1 on 22.2.1989. Since the 1st respondent did not accede to the demand, the petitioner raised an industrial dispute and obtained a reference from Government for adjudication of this dispute before the Labour Court.

3. The petitioner filed her statement of claim contending that she was appointed as a "Bhakarwali" (Chapati Maker) on 1.7.1987 on a monthly salary of Rs.570/- per month. She worked there till 30.6.1988. Since the supervisor’s post fell vacant, the petitioner applied to be appointed as a part-time lady supervisor. The petitioner was appointed as a part-time lady supervisor w.e.f. 1.7.1988. However, she was ill on that day and, therefore, she could not remain present on duty. She informed the 1st respondent accordingly and submitted the medical certificate. Three certificates were submitted by the petitioner to the 1st respondent

disclosing that she was unwell for the entire period. On 16.7.1988, she submitted the third medical certificate informing the 1st respondent that she would attend the work after she recovered from her illness. It appears that, on 22.7.1988, the 1st respondent took back the dock entry pass which had been issued to the petitioner for attending the work. It is on this basis that the petitioner raised an industrial dispute contending that she had been terminated from service illegally w.e.f. 22.7.1988.

4. The 1st respondent filed its written statement contending that it had not terminated the services of the petitioner at any point of time and that it was the petitioner who had abandoned her services. According to the 1st respondent, initially a post of part time lady supervisor was available and seeing the work of the petitioner they had agreed with the proposal to appoint her as a part-time lady supervisor. However, the petitioner had failed to report for duty on 1.7.1988 as a lady supervisor. The 1st respondent has pleaded that the petitioner remained absent from duty for a long period of time and they had no alternative but to employ somebody else in her place as their work was suffering.

5. After the pleadings were completed, evidence was led

by both parties. The Labour Court, on the basis of the evidence on record, came to the conclusion that the services of the petitioner had been illegally terminated on 22.7.1988. The Labour Court came to the conclusion that the 1st respondent has terminated the services of the petitioner without following the procedure laid down by law. No charge-sheet was issued to the petitioner nor was any retrenchment compensation paid to her. Apart from that, no notice nor wages in lieu of notice were tendered to the petitioner. The Labour Court has observed that the evidence on record indicated that the General Secretary of the 1st respondent had informed the petitioner on 22.7.1988, when she reported for work after recovering from her illness, that her services were no longer required. She was also informed that the post of supervisor had been abolished. It appears that thereafter the 1st respondent appointed some other person on the same post. The Labour Court observed that, although the termination of service was illegal and the workman was entitled to be reinstated in service with continuity and full back wages, no relief of this nature could be granted to the petitioner since some other person had been appointed in her place on 6.10.1988. The Labour Court, therefore, awarded compensation of Rs.20,520/- in lieu of reinstatement and Rs.500/- towards costs of the proceeding.

6. The learned advocate for the petitioner submits that the Labour Court has erred in granting compensation instead of reinstating the petitioner. He submits that once the Labour Court has concluded that termination of service is illegal, the Labour Court ought to have directed the respondent No.1 to reinstate the petitioner in service. According to the learned advocate, the reason for denying the relief of reinstatement is unsustainable. He submits that an employee cannot be denied reinstatement only because the employer has appointed someone else in place of the workman after terminating her services, while the dispute was pending in Court. He submits that the dock entry permit was withdrawn from the petitioner and this by itself indicates that there was an illegal termination of service. The learned advocate then submits that, in case this Court concludes that the workman is entitled to reinstatement, she would be reinstated with the Mumbai Port Trust (in short Mb.P.T.) i.e. respondent No.3 herein in view of the judgment of the Division Bench of this Court in **Writ Petition No.3513 of 1991.** The Division Bench of this Court has held that employees working in the canteen should be treated as employees of the Mumbai Port Trust w.e.f. 1.10.1991. The employees of the respondent No.1 were thus entitled to the

benefits which were being paid to the employees of the Mb.P.T.

7. On the other hand, it is argued on behalf of the Society that the petitioner had completed only a year in service and therefore the Labour Court has rightly awarded compensation to her. It is submitted that, in fact, there was no illegality in the action of the Society since it has not terminated the services of the workman. However, since the Society did not oppose the final order regarding the payment of compensation, it had not challenged the findings of the Labour Court. These arguments were also adopted by the learned counsel for the respondent No.3 Mb.P.T. as in the event it is held that the workman is entitled to reinstatement, she would be entitled to be reinstated with the respondent No.3. It is also pointed out that the petitioner has attained the age of superannuation of 1.7.2007 and, therefore, in any event she would not be entitled to reinstatement.

8. Having considered the controversy in the matter, in my view, the Labour Court has erred in not granting reinstatement with continuity of service and full back wages to the petitioner. The Labour Court was wrong in refusing the relief of reinstatement only because some

other person had been appointed as a part-time lady supervisor. This could never have been the reason to refuse reinstatement to the workman. The Labour Court ought to have, therefore, granted reinstatement once it arrived at the conclusion that the petitioner's services had been illegally terminated. Instead the Labour Court has granted compensation in lieu thereof. However, in the present case, over 20 years have passed by, since the petitioner was terminated from service. She has already attained the age of superannuation. It would be reasonable therefore to enhance the compensation which the Labour Court has awarded. Had the petitioner being reinstated, she would have been in service of the 1st respondent. She would thus be entitled to earn the wages, benefits as an employee of the 3rd respondent after the judgment of the Division Bench of this Court in **Writ Petition No.3513 of 1991** i.e. after 25.8.1995. The petitioner would be entitled to a salary of a large amount than Rs.570/-. In fact, today the salary of a full time lady supervisor is more than Rs.6,000/- per month. No doubt the petitioner was to be appointed as a part-time lady supervisor, however, this part-time post has been abolished and only full time lady supervisors are now working with the 3rd respondent Mb.P.T.

8. In such circumstances, in my view, it would be

appropriate to grant compensation in lieu of reinstatement to the petitioner of Rs.1,41,000/- on the basis that she was entitled to work upto the date that she attained the age of superannuation. However, there is no evidence on record to indicate that she is entitled to back wages. No evidence on this issue has been led by either party and, therefore, in my view, it would not be proper to saddle the respondent with back wages for almost 20 years without there being any evidence on record.

9. In this view of the matter, the petitioner is entitled to compensation of Rs.1,41,000/- in lieu of reinstatement. The amount shall be paid to the petitioner within 8 weeks from today.

10. Petition disposed of accordingly.

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